

Protection of the Turkish Straits from the Ship-generated Marine Pollution

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Marine pollution has been a growing concern for over the last two decades. Turkey started to give importance to this problem only after 1980s. However, a special problem has always been on the Turkish agenda, which is the protection of the Turkish Straits against pollution which had continuously increased until 1990s. It is a known fact that the Turkish Straits have long been considered as the cheapest way to transfer Caspian Sea oil; therefore increasing the pollution risk in the region. However, the real problem here is not the reasons of pollution or the precautions to be taken, but rather how Turkey can use authority while taking such precautions and applying them in the area whose current status has been regulated by an international agreement.

This paper presents a general evaluation of marine pollution concept and aims at informing the readers about what has been done and should be done concerning this issue in the Turkish Straits area specifically.

I. The Reasons of Ship-generated Marine Pollution and the Current Situation in the Turkish Straits

Shipping activities are one of the most important reasons of marine pollution. A broad consideration states that only a small percentage of

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this pollution occurs due to such activities. The following are some of the situations that may result in marine pollution.¹

- a) the mixture leaking into the sea from the bilge water of the ships due to the use of oil as the fuel and the shipping of ballast water in oil tankers.
- b) Nuclear-powered ships
- c) The removal of garbage, sewage and other waste materials by discharging them into the sea.
- d) Cargo being shipped
 - aa) Oil and oily residues
 - bb) Chemicals
 - cc) Liquid gases
 - dd) Radioactive materials
- e) The accidents such as collision, grounding, stranding, fire, explosions etc.

The above mentioned situations related to the shipping activities can be subject to strait security. Since straits are open to transit passages, the precautions to be taken against above mentioned possible risks do not vary very much. But the last one is especially notable. For instance, *Istanbul Municipality Environment Protection Control Department* reports that discharging oil and oil derivatives (petrol, fuel oil etc.), garbage, sewerage, paint and scrap metals and bilge water and oil leakage into the sea are the most frequent reasons to fine the ships passing through Straits.² Moreover, context 480 accidents and casualties occurred in the Bosphorus in the period of 1953 – 2003.³

After identifying the reasons of pollution, the next step is to take necessary precautions to avoid it. The international law states two phases concerning this issue.

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- 1 *Third OECD Report on the State Environment*, O.E.C.D., Paris 1991, pp.71-76; F. Yonsel, "Deniz Ulaşımı ve Deniz Kirliliği", http://www.turkishpilots.org.tr/Cevre/Deniz_Kirliligi_F_Yonsel.html (2.07.2005).
 - 2 *Vatan* 34, p.3,(14 February 2005); http://www.turkishpilots.org.tr/haberdetaymansetsiz.asp?kategori_no=49&id=127. (2.07.2005).
 - 3 B. Koldemir, "Bosphorus:Is The Passage Getting Safer", 11 *Journal of the Black Sea /Mediterranean Environment*(*J B S /M E*) 145 (2005).

- 1- The precautions to be taken before a possible pollution,
- 2- The precautions to be taken after a pollution occurred.

It is a well-known fact that the factors causing the accidents cannot be removed completely. However; there are some international standards to reduce the possibility of accidents to the minimum level. Among these standards are the seaworthiness of the ship for sea travels, the determination of the qualifications of the crew and the regulation of the traffic during the times of heavy traffic. The Turkish regulations concerning this issue include certain items necessary for the conformity to the international regulations.

The precautions to be taken after the occurrence of the pollution include the examination of the accident, initiating an emergency alert, the evaluation of the accident, the prevention of the spread of the contaminant as well as the cleaning and repairing processes.

II. Applicable Rules Concerning the Prevention, Reduction and Control of Marine Pollution Caused by the Ships in International Law

There may be straits in the territorial waters of a coastal State which may be subject to the regime of transit passage. The previous thoughts about such a regime were approved in 1958 by the *Convention on the Territorial Sea and the Contiguous Zone*, which put forward the regulation that the innocent passage of foreign ships through the straits used for international navigation between one part of the high sea and another part of it or *the territorial waters of a foreign country* should not be delayed. Therefore, providing that innocent passage should not be suspended, it is possible for coastal States to have regulations, especially related to transportation and navigation, in accordance with the Convention and to the other requirements of international law.⁴ The International Law Commission, among the examples for these regulations, took it into account that the waters of a coastal State should be protected against any kind of pollution to be caused by ships.⁵

The concept of transit passage is a new subject introduced to the

⁴ 1958 *Convention on the Territorial Sea and the Contiguous Zone*, 516 *United Nations Treaty Series(UNTS)* 205, art. 17. Turkey is not a party in this Convention.

⁵ *ILC Report to the General Assembly*, UN Doc. A/3159. *Yearbook of International Law Commission*, Vol. II, 1956, p. 274.

international law by the Third United Nations Conference and *the Law of the Sea Convention, 1982* ((UNLOSC)).⁶ According to the Convention, transit passage is "a regime related to the passage through the straits whose waters belong only to one coastal State or which are inside the territorial waters of neighboring coastal States and which are used for international navigation between one part of the High Sea or of the exclusive economic zone and another part of the High Sea or of the exclusive economic zone, and it means the freedom of navigation and overflight solely for the continuous and expeditious transit passage through the straits."⁷

States bordering straits can put laws and regulations into force which maintain the safety of navigation and control the traffic, which enter the international standards into force related to the discharge of oil and of other dangerous wastes into the strait, which prohibit fishing, and which prevent the bordering States from taking on board or putting overboard for any commodity, currency or person in violation of local customs, fiscal, immigration or sanitary regulations.⁸

These regulations should not lead to the results that hamper and restrict or damage the right to exercise the transit passage and should not allow different treatment among foreign ships.⁹

One of the obligations, among the most important ones, that the ships being in transit passage should comply with, is to take an action appropriate to the generally-accepted international regulations, procedures and practices related to the prevention, reduction and control of the pollution caused by the ships.¹⁰

In the Second Session of the Third Law of the Sea Conference, suggestions were made regarding the ships (especially tankers, super tankers and ships that run on nuclear power) which were considered as special cases.¹¹

⁶ 1982 *United Nations Law of the Sea Convention*, 21 *International Legal Materials (ILM)* 227 (1983), Section 2. Turkey is not a party in this Convention. See for the development of the concept, S. Toluner, *Milletlerarası Hukuk Dersleri, Devletin Yetkisi*, 4th Edition, Beta, İstanbul 1989, p.139 and so on; R. Churchill And V. Lowe, *The Law of the Sea*, Manchester University Press, Second Edition, 1991, pp.91-93; *Oppenheim's International Law*, ed. by R. Jenings and A. Watts, 1992, pp.636-643.

⁷ 1982 *Unlosc*, art.37 and 38/2.

⁸ *Ibid.*, art. 42/1, a, b, c, d.

⁹ *Ibid.*, art. 42/2.

¹⁰ *Ibid.*, art. 39/2(b).

¹¹ Bulgaria, Checkoslovakia, East Germany, Poland, Ukraine, Soviet Socialist Republic,

It is supposed that States bordering straits and those which use the straits should co-operate agreeing on the prevention, reduction and control of the pollution caused by ships.¹²

Hence, with respect to the *UNLOSC 1982*, the jurisdiction of a coastal State to put regulations into force related to the pollution in the straits where transit passage is allowed is made dependant on the condition that the laws and regulations put forward in the frame of this authority should put the international rules and standarts into force related to the discharge of oil, oily residues and other dangerous substances. In practice, *International Regulation for Preventing Collision at Sea, 1972*¹³ (*COLREG*), *The International Convention for the Prevention of Marine Pollution from Ships, 1973*¹⁴ (*MARPOL*), and the rules-related to the ship-based pollution- of *The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972*¹⁵ related to the waste refinement in seas that the former Convention (*MARPOL*) did not cover and "*The International Convention for the Safety of Life at Sea*", 1974¹⁶ can be stated as to be international regulations that should be applied as valid international regulations on this issue.

A/Conf.62/C.2/L 11(1974), art.1, para.2(c), 1982 *Official Records*, Vol.III, p.189; Malaysia, Morocco, Umman, Yemen, A/Conf.62/C.2/L 16(1974), art.8, 1982 *Official Records*, Vol.III, pp.192-193; Fiji, A/Conf.62/C.2/L 19(1974), art.6, 1982 *Official Records*, Vol.III, p.197. All suggestions collected in Main Trends Working Paper of the Second Committee, Provision 58, Formula B Paragraph 1(c) 1982 *Official Records*, Vol.III, p.93, 107, 116.

¹² 1982 *UNLOSC*, art.43/b.

¹³ 1972 *The Convention on the International Regulations for Preventing Collisions at Sea*, 1990 Edition, IMO Publication, Sales No.904 90.10E. Turkey has been a party in this treaty (Abbr: *COLREG*). See, *Turkish Official Gazette*, 29 April 1978 - 16273. The amendments of this regulation was approved with the Act dated 20.9.1984 numbered 84/8541. *Turkish Official Gazette*, 18 November 1984- 18579.

¹⁴ *The International Convention For the Prevention of Pollution From Ships*, 12 *ILM* 1319 (1973). This Convention has never been entered into force. However, its changed version was included in the Protocol 1978 Convention on the Prevention of Pollution Caused by Ships. These Conventions are known as *Marpol 73/78*. 17 *ILM* 546 (1978); Turkey has been a party in this Convention (Abbr: *MARPOL*). See, *Turkish Official Gazette*, 29 April 1978 - 16273.

¹⁵ *The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters* 11 *ILM* 262 (1972). Turkey is not a party in this Convention (Abbr: *London Convention*).

¹⁶ 1974 *International Convention for the Safety of Life at Sea, Consolidated Text With The 1978 Protocol and 1981 and 83 Amendments, 1986*, IMO Sales No.110 86.02 E. Turkey has been a party in this Convention as of 25 May 1980, Decree No. 8/522 by the Council of Ministers, of 6 March 1980 (Abbr: *SOLAS*). See, *Turkish Official Gazette*, 25. May 1980-16998 V 19, 907.

In addition, States bordering straits “may designate sea lines where necessary to promote the safe passage of ships and prescribe traffic separation schemes” to be obeyed. These sea lines and the traffic separation schemes should conform to generally-accepted international regulations.¹⁷ With respect to *UNLOSC* 1982, the legal regime of straits through which the passage is regulated, completely or partly, by treaties having been in force for a long time especially related to the straits is independent of the Third Part of the Convention, that is the rules related to the straits open to international navigation.¹⁸

III. Applicable Rules Concerning the Prevention, Reduction and Control of Marine Pollution Caused by the Ships in the Turkish Straits

Turkish Straits (The Straits shortly) are among those straits regulated, completely or partly, by treaties having been in force for a long time. The passage traffic in the Turkish Straits is quite dense.¹⁹ For this reason, in recent years, with the passage of especially the crude oil tankers and of those carrying kerosene, accidents have occurred that have often caused environmental pollution or have been about to do so. Such accidents as 1979 *Independanta*, 1990 *Jambur*, 1991 *Rabunion* 18 and *Leontas*, 1993 *Rapan* could be considered as to be among the most striking examples.²⁰ The main reason for environmental pollution that these accidents caused includes collision, running aground and other accidents as well as voluntary discharges by ships.

In addition, ships and huge crude oil tankers is another issue in the Straits. Even though there hasn't been any negative events by chance, it is important to mention the change in the types and tonnages of the passing ships and thus the potential danger of pollution that might occur.

¹⁷ 1982 *UNLOSC*, art.41/3.

¹⁸ *Ibid*, art. 35/c.

¹⁹ An average of 25.000 ships with Turkish or foreign flags annually passes through the Turkish Straits. Russian ships come first among these foreign-flagged ships(%51). Following them are the ships from Greece (%11), Romania and Yugoslavia. The ships that cause this dense traffic use the Straits due to the maritime business that they do with Mediterranean countries from the Black Sea ports of our country, from the countries that have a coast to the Black Sea and from the Western European countries as a result of the connection of the river Tuna with the rivers in Western Europe. For the shipping traffic by vessel type, in addition see, N. Akten, “*The Bosphorus:Growth of Oil Shipping and Marine Casualties*”, 10 *J B S /M E* 209 (2004).

²⁰ *Ibid.*, p.222.

The present legal regime of Turkish Straits was determined by the *Convention Regarding the Regime of the Straits*, 1936.²¹ This convention, while, in its first article, granting complete freedom of transit and the navigation in the Straits, restricts Turkish sovereignty for this purpose. As can be seen, the passage and the navigation were regulated with the provisions of this Convention.

The Teaty hereinafter referred "*Montreux Convention*" briefly does not cover any provision related to pollution specifically. This situation results from the current conditions and from the lack of interest in environmental problems at that time. However, the approval of the freedom of passage and navigation and the absence of rules related to pollution does not mean that Turkey, as a coastal State, can not take any measures.²² Turkey can take measures and use rights given to coastal States by the law, by evaluating the passage in terms of innocence.²³

According to *UNLOSC*, 1982, countries will take measures that aim at eliminating pollution caused by ships and especially avoiding accidents and handling with dangerous situations, maintaining the safety of the activities in the sea, preventing the wastes occuring due to incidental accidents, and at determining the standarts related to the construction, design, equipment and the manning of ships, which will help to decrease pollution to the least.²⁴

The coastal State has the authority to designate sea lines and the traffic separation schemes²⁵ in case of a necessity for the safety of the navigation both in its territorial waters and in the straits which are used

21 *League of Nations Treaty Series(LNTS)*, vol. 173, p.213.

22 For further information, see S. Toluner, "*The Regulation of Passage Through the Turkish Straits and the Montreux Convention*", 44 *Annales De la Faculte De Droit D'Istanbul* 79 (1981).

23 S. Meray, O. Olcay, *Montreux Boğazlar Konferansı, Tutanaklar, Belgeler*, Ankara 1976, pp.326-327.

24 1982 *UNLOSC*, art.194/3.

25 Traffic separation scheme, according to the definition approved by IMO, is "a routing-management established to seperate the opposite traffic flow by determining appropriate routes and traffic lines for the purpose of increasing the navigational safety in cases of factors that hinder navigating and of limited depth or of unsuitable weather conditions in the maritime regions where routes are close to each other, in the areas where there is dense traffic or in the areas where movement ability is hindered due to limited navigational space". E. Ersoy, *Boğazlar Bölgesinde Seyir Güvenliği Semineri, Boğazlar Bölgesinde Hukuksal Statü ve Trafik Ayırım Düzeni Kurulması*, İstanbul, 10 Nisan 1992, p.4.

for international navigation.²⁶ In terms of international straits, the authority is kept rather limited and made to be taken under more control. That is, before the States bordering straits determine the sea lines and the new ones for these or before they determine the traffic order or before they want these to be obeyed, they will present their proposals to the authorized competent international organization with a view to their adoption. This organization may adopt only such sea lines and the traffic separation schemes as may be agreed with the States bordering the straits.²⁷ It is doubtless that the use of this authority is a way of solution appropriate to the *Montreux Convention* for Turkey.²⁸

This way of solution can not be considered as to be inappropriate to the rule that the ships, as provided in *Montreux Convention*, whatever their flags and cargoes are can benefit from the freedom of passage without any formalities²⁹ at any time by day and by night. The reason is that the *Convention* restricts the authority of Turkey only in terms of passage and navigation. There has not been any limitation to the rights of police and civil and criminal jurisdiction.³⁰ Therefore, considering the right for freedom of passage and navigation required by the treaty, it will be possible for Turkey to make regulations which are related to prevent, reduce and control the pollution and which put international regulations into force and will be possible to establish the traffic separation schemes to maintain the safety of passage. Turkey has supported almost all of these international regulations that are important for a safe navigation in its territorial waters. Hence, its national regulations are not different from these at all.

According to *Montreux Convention*, pilotage and towage are optional. However, there are not any obstacle to suggest the States benefiting from the straits to use these services and to announce the dangers in terms of the navigation. This situation is already a responsibility undertaken as a result of the requirement of the *Convention*. In order that the repeti-

²⁶ 1982 UNLOSC., art.22 ve 41.

²⁷ *Ibid*, art.41/4.

²⁸ S. Toluner, "The Regulation...", *op. cit.*, p.90; Ersoy, *op. cit.*, pp.19-24.

²⁹ It seems in the disagreement in the application of the Convention that the Soviet Union consider such issues as the obligation of taking guidance and the customs control to be a difficult procedure. See, K. Gürün, *Dış İlişkiler ve Türk Politikası, 1939'dan Günümüze Kadar*, Ankara, 1983, p.184.

³⁰ Turkey, during the Conference, clearly and repeatedly declared that it wanted to keep these authorities. S. Meray, O. Olcay, *op.cit.*, p.42, 240, 326-327.

tion of maritime accidents that have happened in recent years in the area of Turkish Straits can be prevented to avoid more damages and unretrievable losses, precautions which will help decrease the possibility of an accident to the least should be taken and put into practice. For the purpose of determining what are needed for the establishment of a new navigational safety system, seminars have been held since the beginning of 1990s. These studies have been proved that, besides the present ones, it is necessary to take such additional measures as the establishment of a traffic separation schemes appropriate to the needs in line with IMO standards and as the establishment of a traffic control system equipped with the network of a radar and correspondence. *Montreux Convention* is not an obstacle to taking these measures and the like, yet all these will be the measures that depend on monetary sources. It will be reasonable to put forth an effort to have a co-operation with the States using the straits and with the international maritime organizations on this issue. It is rather difficult for Turkey to afford this cost on its own with the incomes stated in the *Convention*³¹. Since no taxes and charges can be demanded except for those provided in the *Convention*, it will neither be possible, in this sense, to divide the costs among the States using the Straits.

Among the Turkish regulations related to the passage, "*The Regulations for the Administration of Maritime Traffic in the Turkish Straits, 1998*"³² is one of the main texts. On 13th of March, 1994, in an area of the Straits close to the Black Sea, two Cyprus-flagged ships, one of which was a tanker (*Nassia*) and the other a dry bulk carrier (*Shipbroker*), collided causing a fire in the tanker, which put such issues on the agenda again as the safety in the Straits and the prevention of pollution. As a result of this accident, 15 to 20 tons of crude oil was discharged into the sea. In addition, there were deaths in the accident. The fire could be extinguished four days after the accident happened.³³

³¹ If the report prepared by Prof. Çağa on this subject is considered, a considerable increase can be seen in the income obtained. T. Çağa, *Montrö Konvansiyonu Gereğince Boğazlardan Transit Geçen Gemilerden Alınacak Resim ve Vergilerin Hesap Şekline Dair Rapor* (Gemilerden Altın Frank Esası Üzerinden Alınan Resimlere Dair), 20 May 1982, Istanbul.

³² *Turkish Official Gazette*, 6 December 1998-23515.

³³ See for the table of major collision accidents in the Bosphorus and the Marmara Sea, N. Akten, "*The Strait of Istanbul(Bosphorus):The Seaway Separating the Continents with its Dense Shipping Traffic*", 9 *Turkish Journal of Marine Sciences* 259 (2003); for the analysis of casualties "*Analysis of Shipping Casualties in the Bosphorus*", *Journal of Navigation*, The Royal Institute of Navigation 57(3), London 2004, pp.345-356 and [http:// www. istanbulcevor.gov.tr/deniz2.asp](http://www.istanbulcevor.gov.tr/deniz2.asp) (02.07.2005).

The explanations and discussions about the accident gave grounds for the application of the "*Maritime Traffic Regulations for the Turkish Straits and the Marmara Region, 1994*"³⁴. The thought that such a regulation is necessary was one of the solutions frequently emphasized long before these regulations were put into force. The installation of the equipment that will monitor in the Straits was considered to be an important solution for maintaining the safety of passage.

The *1994 Regulations* include the issues of police jurisdiction unrestricted by *Montreux Convention*. This jurisdiction should be reasonably used and the related national regulations should be interpreted with a good faith to maintain the security of passage and should be appropriate to the generally-accepted international applications.³⁵

The main issues of the *Regulations* can be grouped under three main headings: Report demanding, establishment of traffic control centers and stations and preparation of traffic separation schemes³⁶. While some of the rules found in the regulations repeat the aspects which are already present in the legislation³⁷ or which are not opposed and practically applied for maintaining the security of passage³⁸ some are new. In this context, questions on whether some of the provisions of the *Regulations* agreed with *Montreux* especially in terms of the following issues were brought about and discussed for a long time.³⁹

The report system includes the submission of the location report and the *Navigation Plan I and II*. According to this, the ships carrying dangerous cargoes and the ships of 500 gross tons or more are required to inform the administration at least 24 hours before entering the Straits. The notification, *first in a written form*, cover the name of the ship, its

³⁴ *The Maritime Traffic Regulations for the Turkish Straits and the Marmara Region, 1994, Turkish Official Gazette, 11 January 1994-21815.*

³⁵ *Boğazlardan Geçiş Güvenliği ve Montreux Sözleşmesi (B.G.G. ve M.S.), Milletlerarası Hukuk ve Milletlerarası Münasebetler Araştırma ve Uygulama Merkezi, İstanbul 1994, S. Toluner, "Boğazlardan Geçiş ve Türkiye'nin Yetkileri", ibid., p.16, 18; Turkish Straits, New Problems, New Solutions, Foundation for Middle East and Balkan Studies, İstanbul 1995, p.32.*

³⁶ These schemes have been approved by IMO and were formally adopted on 25th November 1995. N. Akten, *op. cit.*, "*The Bosphorus....*", 10 *J B S / M E* 212 (2004).

³⁷ Such as art.17, 27, 43.

³⁸ art.24, 40, 41 and so on.

³⁹ In the seminar on *B.G.G. ve M.S.*, these questions were discussed in detail. See, *supra.*, footnote 35.

flag, call sign, tonnage, departure and arrival ports, its cargo, its incapacities that limit its navigation, whether it needs pilotage, and if present, the *Navigation Plan I* (art.7), which consists of these information and the like; after this comes the *Navigation Plan II* (art.8) through VHF just 2 hours before the arrival at the entrance of the Straits or 20 miles to the Straits (whichever first happens). Moreover, the ships to enter the Straits whose length is more than 20 meters will send a location report via VHF 5 miles before the entrance of the Straits (art.9).

The question whether these rules of the *Regulations* will agree with *Montreux Convention* "can be vindicated on the grounds that they are actions necessary to be taken for the effective and good application of traffic regulations and that they are not incongruous with generally accepted international applications."⁴⁰

The *Regulations* made pilotage obligatory only for Turkish ships which are 150 meters and more passing through the straits. (art.31) With respect to the passing of the ships with foreign flags, they are to be warned about this issue in line with the provisions of the *Montreux Convention*.

Measures can be taken by the Administration in order to keep the courses of the ships whose length is 150 meters or more substituted by tugboats as well as to preserve the routes of these substitutes. (art.21/b) In order to be in comply with *Montreux*, the services of tugboats should be free of charge.

Another issue to be discussed is the responsibility for notification, in the phase of the planning of navigation, about the ship and its cargo which is 150 meters and more (art.29). In the article, it is required that the administration should evaluate the notification and report the result to the applicant. The administration, during the process of evaluation, should consider both the sizes of the ship and its ability to manoeuvre as well as the morphological structure of the Straits, the physical condition and the traffic and the safety of people, goods and of the environment. If the evaluation here is carried out without damaging the sprit of the freedom of passage, it can then agree with *Montreux*.⁴¹

⁴⁰ S. Toluner, "Boğazlardan Geçiş...", *ibid.*, p.18, G. Aybay, "Boğazlar Bölgesi Hakkında Tüzük", *ibid.*, p.46 and so on.; p.53. Also see, G. Aybay-E. Ersoy, "Rusya Federasyonu'nun Boğazlar Bölgesi Tüzüğüyle İlgili İtirazları Hakkında", *Denizatleki*, Nisan-Mayıs 1994, Y.8, S.4-5, pp.6-9.

⁴¹ S. Toluner, *Boğazlardan Geçiş...*, *ibid.*, p.19. Toluner puts forward that this require-

The ships running on nuclear power or having a nuclear, dangerous or harmful cargo and waste are required to take permission in the phase of planning of journey (art.30). However, this rule conflicts with the principle of the freedom of passage put forward by *Montreux*. According to the general application of international law, the ships having such a cargo can be required to be appropriate to the rules put forward by IMO and to carry their cargoes considering these rules. Nevertheless, the requirement of taking permission has not received a common approval.⁴²

In this respect, the *Regulations* and the related traffic separation schemes can be regarded as a positive development in general, yet it was difficult to find an agreement between especially the articles 29 and 30 stated above and *Montreux Convention*.⁴³ This issue was also put on the agenda and discussed.⁴⁴ Turkey, considering the critics, prepared and put "*The Regulations on Turkish Straits Maritime Traffic Order*" into force in 1998, which included new rules.⁴⁵ However, this time as a result of the critics⁴⁶ on some issues, the *Regulations* were changed taking

ment can be ignored only if passing is physically impossible. Çağa mentions a missing point here. According to the *Regulations on Ports*, Istanbul, he stated that there is a rule that the middle line that separates the two directions can not be passed except for obligatory conditions. He added that since there is no permissive rule for exceptional situations in the *Regulations*, the Administration will not give permission for passing to the ships unable to pass without running over the middle line (it will pass the line on obligatory conditions) and asked what the underlying basis will be if the Administration allows after all. *ibid.*, p.55; Aybay replying to this question, according to the calculations made by classifying ships, informed that (a) 150 meters or less, ships of 127 meters can pass staying between the lines determined for the narrowest and curved parts of the Straits (b) larger ships can not pass without a tugboat and are sometimes to cross the middle line, (c) and much larger ships can pass only if they always go over the middle line. Passing across the middle line means being in the line of ships coming from the opposite direction, that is colliding with them. Therefore, measures can be taken for the ships mentioned in (b) not to encounter with each other in narrow areas. As for the ships mentioned in (c), it is pointed out that a one-way passing is considered. *ibid.*, p.64.

42 S. Toluner, *Boğazlardan Geçiş...*, *ibid.*, pp.19-20; pp.87-88.

43 S. Toluner, *Boğazlardan Geçiş...*, *ibid.*, p. 19; T. Çağa, *ibid.*, p.55; G. Aybay, p.64. The critics created positive results, and these articles were corrected in the new *Turkish Straits Maritime Traffic Order Regulations*.

44 *B.G.G. ve M.S.*

45 "*The Regulations on Turkish Straits Maritime Traffic Order*", *Turkish Official Gazette*, 6 December 1998-23515.

46 The critics in question focused on the language used and on the regime of passage. T. Tarhanlı, "*Türk Boğazlarından Geçiş Rejimi ve Türkiye'nin Yetkileri*", *Second Maritime Symposium*, 1999, p.118-122. A.N. Tütüncü, "*Türk Boğazlarından Geçiş ve*

these critics into consideration in some parts.⁴⁷ As stated clearly, the *Regulations* were prepared in the context of the *Montreux Convention*. In other words, it is an arrangement appropriate to its sprit. The purpose of the *Regulations* was that an authority is to be given to Turkey for the management of maritime traffic and that the safety of passage through the Straits is to be maintained. This is an authority already given to coastal States, and it is in the scope of the police jurisdiction according to *Montreux*.

In addition, after the *Regulations* were put into force some countries benefiting from the Straits opposed to It. Especially the Russian Federation, affecting other countries that use the Turkish Straits, tried to make it approved in IMO to change the traffic separation schemes of the Straits.⁴⁸ However, Russia responded positively to the new rules that Turkey put into practice for the passage through the Straits of Istanbul and Dardanelles. Also, the Russian Minister of Transport declared that they were closely interested in the passage of ships through the Straits and that safer petroleum tankers were being constructed considering the dangers posed for the Straits. It seems that the risk of passage of Russian tankers through the Straits which are safer yet more in number is going on. It would be better to remember that the risk of an accident is not avoided even though the ships are safer. Turkey respect these principles stated above and use its jurisdictional authority without any concession will keep steadiness in practice.

The *Regulations* have been considered a useful development in terms of the decrease in the risk of an accident when the precautions to be taken are considered before pollution occurs. At the time when the *Regulations* were started to be applied and following this, 1994-1995, 8-10 accidents happened in average in this area. Also, the decrease in this rate in recent years has shown the usefulness of these *Regulations*. There is no doubt that the changes in the *Regulations* have positively contributed to this result. Moreover, the fact that there has not been any opposition of the States benefiting from passage about the issues related to the applications of the *Regulations* in recent years can be considered as an important point about the fact that this application has been

Deniz Çevresinin Korunması Sorunu", Marmara Denizi 2000 Sempozyumu Bildiriler Kitabı, 11-12 Kasım 2000, İstanbul, p.75.

⁴⁷ *Turkish Official Gazette*, 5 December 1999-23686.

⁴⁸ C. Istikbal, "Boğazlarda Tarihsel Perspektif ve Rusya'nın Kağıdı", http://www.turkish-pilots.org.tr/koseyazisi.asp?kategori_no=20&id=142 (02.07.2005).

improved considerably taking lessons from the failures. However, the fact that the current situation established by the *Regulations* were accompanied by a control system equipped with a network of radar and correspondance has been important in terms of having an effective application. Also, coping with technical failures in maintaining the safety of passage is among the duties that Turkey should undertake. For this purpose, *Turkish Straits Ship Traffic and Information Management System* which had been in the planning phase for a long time and which will arrange the ship traffic in the Straits of Dardanells and Istanbul was put into force in the first of July, 2003. The system is based on a number of radar stations. In this way, the pollution in an area of only 10cm² is determined and the authorities can be informed about this. The system has not been finished completely yet. When it finishes it will also cover the Sea of Marmara and Dardanells.

In this area, the Straits, where there is dense traffic, establishing a board in 1997 was another positive development, too. This board has played a significant role to take action in an emergency and to prevent the loss of lives.

III. Conclusions

There are an average of 25.000 vessel transits with Turkish or foreign flags annually in the Turkish Straits. Especially the Strait of Istanbul with nearly 12 vessels an hour has very dense traffic. Moreover, Istanbul as a city which is found in the world's cultural heritage list is located in an important part of the Turkish Straits. The changes in the cargoes, types and tonnages of the passing ships through the Turkish Straits increased the potential danger of pollution that might occur in the last 10 years. So, the Turkish Government has taken important steps for the safer navigation and cleaner environment in this particularly sensitive area. Struggling with the potential danger and technical failures in maintaining the safety of passage is among the duties that Turkey should undertake as a coastal State, too.

The treaty which regulates the legal status of passage through the Straits does not cover any provision related to the pollution specifically. This situation results from the current conditions and the lack of interest in environmental problems when the Convention was enacted. However, the approval of the freedom of passage and navigation and the absence of rules related to pollution in the Convention does not mean

that Turkey, can not take any measures. With this point of view, Turkey prepared and put "The Regulations on Turkish Straits Maritime Traffic Order" into force in 1998 for the management of maritime traffic and that the safety of passage through the Straits.

Regulations include the issues of police jurisdiction unrestricted by *Montreux Convention*. This jurisdiction should be reasonably used and the related national regulations should be interpreted with a good faith to maintain the security of passage and should be appropriate to the generally-accepted international applications. *Regulations'* provisions are not against rules of international law and the spirit of Montreux, therefore the right of innocent passage. The fact that the current situation established by the *Regulations* were accompanied by a control system equipped with a network of radar and correspondance has been important in terms of having an effective application. The system has not been entirely completed, yet. When this project has been carried out completely, any kind of ship activity will be able to be observed, controlled and managed in the Straits area.

1. Introduction

September 11th terrorist attacks have clearly shown that the security of the world's sea lanes is an essential and that the maritime environment is always under the danger of terrorism. Any disturbance in the sea lanes may lead to a number of regional and a lot of local security concerns of great dimensions. Although terrorist attacks of September 11th and the maritime security enhancement have been world-wide security issues, it has been a subject of interest in the past.

Maritime security has been discussed by many ways. The United States limited to terrorist attacks, transnational terrorism and shipping of conventional weapons, but it also expands ways to covering piracy, smuggling, piracy and kidnapping. International organizations have conducted joint studies in various ways. A number of states have also signed a set of treaties and agreements that have become especially important, including the legal basis. They are not so effective, however, because of the reliance on the way in terms of the practical application.

After the 1954 interpellation in Athens, the United States and the United Kingdom had through the Turkish Straits. This subject is closely related to the

¹ According to the Turkish Law, the Straits are under the jurisdiction of Turkey.